

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34504

UNION PACIFIC RAILROAD COMPANY—LEASE AND OPERATION EXEMPTION—THE
BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY

Decided: August 26, 2004

By petition filed on May 28, 2004, Union Pacific Railroad Company (UP) seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 11323-24 to lease and operate over approximately 5.39 miles of The Burlington Northern and Santa Fe Railway Company's (BNSF) line extending from BNSF milepost 474.01, near Marion, AR, to BNSF milepost 479.4, near West Memphis, AR.¹ We will grant the exemption, subject to standard labor protective conditions.

BACKGROUND

UP currently has overhead trackage rights on BNSF's line segment between BNSF milepost 476.2, near Presley Junction, AR, and BNSF milepost 479.4, near West Memphis. These rights were acquired as part of the UP/BNSF settlement agreement in the UP/Southern Pacific Transportation Company merger.² UP also had temporary overhead trackage rights over the remaining segment of the line, subject to the same terms and conditions that are applicable to the Presley Junction-West Memphis line segment. UP's temporary trackage rights expired on July 31, 2004.³

Pursuant to the lease agreement, UP and BNSF will convert these two trackage rights arrangements into a long-term lease of the line by UP, subject to BNSF's retained trackage rights. UP states that, while BNSF uses the line primarily for local shipments that only require the line

¹ Sections of UP's petition identify the line segment at issue as extending between BNSF mileposts 474.4 and 479.01. However, the lease indicates that the mileage is between milepost 474.01 and milepost 479.40. On August 9, 2004, UP filed a letter indicating that the mileposts in the lease are correct.

² See Union Pacific/Southern Pacific Merger, 1 S.T.B. 233 (1996).

³ See Union Pacific Railroad Company—Temporary Trackage Rights Exemption—The Burlington Northern and Santa Fe Railway Company, STB Finance Docket No. 34440 (STB served Jan. 29, 2004).

to be maintained as Federal Railroad Administration excepted track, UP uses the line primarily for the through movement of trains that require a higher level of track maintenance. Thus, unlike the typical trackage rights arrangement where the track owner maintains the track to whatever level it requires for its own operations, UP, as the tenant, requires a higher level of track maintenance than the owner, BNSF. By restructuring the relationship as a long-term lease, UP submits that it will have better control of the line, including the expenditures relating to track improvements and that it will be able to capitalize those improvements in the same manner as BNSF.

The Presley Junction-West Memphis segment of the line forms part of a route from UP's Marion intermodal facility. UP states that it will continue to be the predominant user of this segment of the line, averaging 4 to 6 trains per day. The Marion-Presley Junction segment of the line, on the other hand, will continue to be used only when it is necessary to route traffic off of UP's Jonesboro line, when that line is under repair. By including the Marion-Presley Junction segment of the line in the long-term lease, UP submits that it will eliminate the need for BNSF to grant UP temporary trackage rights over this segment whenever UP is performing maintenance work on its Jonesboro line. Also, the Marion-Presley Junction segment has been included in the lease because UP will require a higher level of track maintenance to accommodate these moves, when they occur, than the excepted track BNSF requires for its own operations. Finally, the length of the Marion-Presley Junction segment is just over 2 miles and UP argues that it makes sense to treat the entire Marion-West Memphis line as a single facility, rather than two separate facilities operating in different ways.

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 11323(a)(2), prior Board approval is required for a rail carrier to lease the property of another rail carrier. Under 49 U.S.C. 10502, however, the Board must exempt a transaction or service from regulation when we find that: (1) regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101; and (2) either (a) the transaction or service is of limited scope, or (b) regulation is not needed to protect shippers from the abuse of market power.

Detailed scrutiny of the proposed transaction through an application for review and approval under 49 U.S.C. 11323-24 is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101. An exemption from the application process will minimize the need for Federal regulatory control [49 U.S.C. 10101(2)], foster sound economic conditions in transportation [49 U.S.C. 10101(5)], reduce regulatory barriers to entry into and exit from the rail industry [49 U.S.C. 10101(7)], and encourage efficient management of railroads [49 U.S.C. 10101(9)]. Other aspects of the rail transportation policy are not adversely affected.

Regulation of the proposed transaction is not necessary to protect shippers from the abuse of market power. The lease will have no impact on the competitive situation over the subject lines. BNSF will retain its rights to continue to serve existing and any future shippers on a line that will be maintained to higher safety standards. UP similarly is not giving up any operating rights and is actually gaining long-term rights to use the Marion-Presley Junction segment, which will enhance its ability to provide competitive rail service when its Jonesboro route is under repair. Given our market power finding, we need not determine whether the proposed transaction is limited in scope.

Under 49 U.S.C. 10502(g), we may not use our exemption authority to relieve a carrier of its statutory obligation to protect the interests of employees. Accordingly, as a condition to granting this exemption, we will impose the standard employee protective conditions in Mendocino Coast Ry., Inc.—Lease and Operate, 354 I.C.C. 732 (1978) and 360 I.C.C. 653 (1980).

The proposed lease is exempt from both the environmental reporting requirements under 49 CFR 1105.6(c) and the historic reporting requirements under 49 CFR 1105.8(b).⁴

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Under 49 U.S.C. 10502, we exempt from the prior approval requirements of 49 U.S.C. 11323-24 the lease by UP of the above-described line, subject to the employee protective conditions in Mendocino Coast Ry., Inc.—Lease and Operate, 354 I.C.C. 732 (1978) and 360 I.C.C. 653 (1980).

2. Notice of the exemption will be published in the Federal Register on September 1, 2004.

⁴ According to UP, this transaction does not involve any operational changes, BNSF has no plans to dispose of or alter historic properties, and further Board approval would be required for BNSF to abandon any service.

3. This decision will be effective on September 25, 2004. Petitions to stay must be filed by September 7, 2004. Petitions to reopen must be filed by September 15, 2004.

By the Board, Chairman Nober, Vice Chairman Mulvey, and Commissioner Buttrey.

Vernon A. Williams
Secretary